

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
SPRINGVILLE CITY, SETTLEMENT AGREEMENT DOCKET No. M15-02**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-8*).

SPRINGVILLE CITY Statutory Maximum of \$10,000/violation/day for 1 days for 5 violation(s) = \$50,000
(Calculated as required)

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation;
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance; and
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1) the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator;
- 6) good faith efforts of the violator;
- 7) ability of the violator to pay; and
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for SPRINGVILLE CITY has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on the following citations:

1. *Utah Code Ann. § 19-5-107(1)(a)* for causing pollution which could constitute a menace to public health and welfare, and could be harmful to wildlife, fish or aquatic life.
2. *Utah Code Ann. § 19-5-107(3)(a)* for discharging wastes to a water of the State without an authorized discharge permit.
3. Section of I.D.1.a. of The Permit for discharge untreated wastewater to a water of the State.
4. Section of I.D.1.b. of The Permit for discharge of untreated wastewater that could have created a health hazard, nuisance, or is a threat to the environment.
5. Utah Admin. Code R317-2-7.2 for discharging a waste which may have become offensive such as floating debris, oil, scum or other nuisances such as color, odor or taste.

On November 2, 2014 at approximately 10:02 am the Oak Brook lift station in Springville City began discharging untreated wastewater. The discharge was caused by a problem with the SCADA and pumping systems at the Oak Brook lift station going down. It is believed the problem was caused by a power spike due to an electric substation going out around 8:51 am. Due to the SCADA system being down Springville was unaware of the event until it was reported to their dispatch at 10:57 am. At 11:11 am the lift station was restarted and the discharge of untreated wastewater ceased. At 11:50 am the overflow event was reported to the Division of Water Quality (DWQ) as incident report 12011. During the 69 minute discharge event approximately 24,633 gallons¹ of untreated wastewater was discharged. According to the map provided in Springville's report the discharge flowed by storm drain and entered Spring Creek just north of approximately 79 N 400 W Springville, UT. The discharge would have traveled down Spring Creek to Utah Lake.

VIOLATIONS:

Based upon the information presented in Springville City's report, the City was in violation for a minimum of 1 day (November 2, 2014). No sampling of the receiving water was conducted so it cannot be exactly determined the extent to which water quality standards may have been violated or for what duration. Due to this lack of information the DWQ will assess the event for 1 day. The NOV was written on violation of 3 citations of water quality standards and 2 permit conditions. For the purpose of calculating a penalty for this Settlement Agreement the five violations will be reduced down to two violations and assessed based on citation 1 and 4.

¹ Re: Notice of Violation and Order, Docket No. M15-02, Springville City SSO 11/2/2014 Oakbrook Lift Station (DWQ-2015-004409)
Page 2 of 4

Utah Administrative Code R317-1-8.3

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.
2. Creation of a serious hazard to public health or the environment.
3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.
4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Both violations 1 and 5 address the potential creation of a public health hazard due to the discharge. The elevated levels of E. coli in the discharge could cause potential a potential health hazard and impair beneficial uses of water. Category B addresses violations which potentially would cause (undocumented) public health effects. The discharge of over 24,000 gallons of untreated wastewater clearly meets the standards of Category B and both violations used for the settlement assessment will be assessed at Category B.

Mitigation considerations are subdivided into three equal categories (1/3 each for History of Compliance, Degree of Negligence, and Degree of Cooperation).

Credit for degree of negligence

Springville City will be given 100% credit for degree of negligence in the penalty calculation. This credit is given because the power spike experienced by the pumping station was unpredictable and not caused by any negligence by Springville City.

Credit for history of compliance

Springville City's report¹ states 2 previous overflow events have occurred at this pumping station in the past 5 years. These events occurred on January 2, 2013 and September 10, 2012 with volumes of 2,100 gallons and 10,000 gallons, respectively. The City will be given 50% credit for history of compliance in the penalty calculation due to the occurrence of these previous events.

Credit for good faith efforts to comply

Springville City will be given 100% credit for good faith efforts in the penalty calculation. The City showed good faith with actions taken by City staff to respond to the event and notify the DWQ.

\$2,833/day/violation x 2 violations x 1 day = \$5,667 Total Category B Penalty

Economic Benefit Justification:

Economic benefit associated with SPRINGVILLE CITY was calculated based on; 1) Capital investment delayed; 2) Delayed expenditures, and; 3) Expenses not incurred. Avoided and delayed expenses are based on a survey of recent construction, engineering and/or product costs as appropriate. The field entries for the Environmental Protection Agency (EPA) economic benefit model (BEN) were provided by SPRINGVILLE CITY for the following categories, as appropriate:

- Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as treatment systems, silt fencing, gravel socks, etc. It was not found that Springville City deliberately avoided any capital investments.
- Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed. It has not been found that Springville City was insufficiently inspecting, monitoring, or keeping records for the project.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation. It was not found that Springville City knowingly avoided any operation or maintenance cost but misunderstood the required effluent quality.

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. The economic benefit calculation was done with the current BEN program provided by the EPA. The penalty for the economic benefit portion of non-compliance is \$0 as calculated.

TOTAL PENALTY AMOUNT: \$5,667 + \$0 = \$5,667

MITIGATION PROJECTS (SUPPLEMENTAL ENVIRONMENTAL PROJECTS)

Mitigation projects must fully adhere to *UAC R317-1-8.4*. SPRINGVILLE CITY agrees not to attempt to gain or generate any positive publicity, and further agrees not to deduct or otherwise attempt to obtain a tax benefit from the foregoing funding of the mitigation project(s). Approved mitigation projects shall only be applied to the gravity component of the total penalty amount (\$5,667).

1. Training Programs - Work with either RWAU or WEAU; Springville City will provide mitigation funds for a training seminar. The agenda and course work must be specifically associated with operation, maintenance and performance improvement issues related to collection systems, as approved by the DWQ Director.
2. Mitigation Project(s) – To be determined by SPRINGVILLE CITY. These projects must be approved by the DWQ Director and at least partially involve an area of water pollution control.
3. Anonymous Donation(s) – Donations can be submitted to a nonprofit organization to be used for environmental education, improving the environment or other environmental purposes. The donation must be approved by the DWQ Director.

DWQ-2015-011465